

E-filed: 3/10/2009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. C-00-20905 RMW

ORDER REGARDING ENTRY OF
JUDGMENT

The parties have submitted competing proposed forms of judgment. The parties agree on the form of judgment in all but two respects. As to the first, Hynix requests that it be permitted to accrue or deposit in escrow the ongoing royalties owed under the judgment pending resolution of any appeals from the judgment. Hynix's request is premature. Hynix may raise the issue by way of a Rule 62 motion following entry of judgment. The court also notes that Hynix's fear – that Rambus will not return any royalties paid by Hynix even if Hynix prevails on appeal – appears baseless. *E.g., Broadcom Corp. v. Qualcomm Inc.*, 585 F. Supp. 2d 1187 (C.D. Cal. 2008) (ordering Broadcom to repay "sunset royalties" following Federal Circuit reversal on liability).

As to the second, the parties dispute the timing of any proceedings regarding the taxing of

costs. Hynix requests that any determination of costs occur after all appeals are final. Though there is some wisdom to Hynix's approach, *see, e.g., American Infra-Red Radiant Co. v. Lambert Industries, Inc.*, 41 F.R.D. 161 (D. Minn. 1966), the Civil Local Rules contemplate addressing costs swiftly. *See* Civil L.R. 54-1(a) (imposing a 14-day deadline following entry of judgment for a prevailing party to file its bill of costs). This ensures that the court considers the reasonableness of costs while the case is fresh, which is important because this inquiry is difficult when made from a "cold" record.

The magnitude of this case, and the alleged size of Rambus's cost bill, counsel against submitting the bill of costs to the clerk's office in the first instance. *E.g., Syracuse Broadcasting Corp. v. Newhouse*, 32 F.R.D. 29, 29 (N.D.N.Y. 1963) ("The attorneys for both sides seem satisfied to . . . bypass the Clerk in the first instance. . . . In fact, the substantial items challenged are ones peculiarly within the knowledge of the trial judge and would be practically an impossible burden for the Clerk to resolve with any degree of reason and certainty."); *Deering, Milliken & Co v. Temp-Resisto Corp.*, 169 F. Supp. 453, 456 (S.D.N.Y. 1959) (explaining why "[t]here is no merit in the defendants' contention that Rule 54(d), F.R.Civ.P., requires that costs must be taxed in the first instance by the clerk and that the Court has no power to tax them"). The difficulty of this inquiry also counsels against the application of the Local Rules' 14-day deadline for filing the bill of costs and 10-day deadline for filing objections. *See* Civil L.R. 54-1(a); 54-2(a). Accordingly, Rambus shall have 30 days from the entry of judgment to file its bill of costs with the court. Hynix shall have 21 days to file any objections to Rambus's bill of costs, and may seek from the court any necessary extension.



DATED: 3/10/2009

RONALD M. WHYTE
United States District Judge

This document has been electronically sent to: counsel in 00-20905.

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Dated: 3/10/2009 TSF
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